

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THE CAMPAIGN FOR BUFFALO HISTORY,
ARCHITECTURE & CULTURE, INC.,

Petitioner,
vs.

Civil Action No: _____

BUFFALO AND FORT ERIE PUBLIC BRIDGE
AUTHORITY,

New York State Supreme Court
Erie County Index No.: I2012-1976

Respondent.

Certified Record of Proceedings

Part 18

Block 201

The northwestern end of Block 201 is located within the footprint of Alternative 3 (Option 23B-R2). It is described above in Section 8.3.

Triangle at Busti Avenue and Hampshire Street

The small triangle at Busti Avenue and Hampshire Street is located within the footprint of Alternative 3 (Option 23B-R2). It is described above in Section 8.3.

Block 205

The southwestern corner of Block 205 is located within the footprint of Alternative 3 (Option 23B-R2). It is described above in Section 8.3.

8.9.2 Potential Cultural Resources Below Street Grade

Potential cultural resources below street grade, including earlier forms of pavement, streetcar and railroad tracks, and early utilities, are identical to those discussed above in Section 8.3.2.

8.10 Historic Sensitivity Assessment: Alternative 3 (Option 23B-R2)

Historical research and map analysis indicates that the area of Alternative 3 (Option 23B-R2) had undergone extensive development in the course of the late 19th to 20th centuries, similar to that described above for Alternative 1 (see Sections 8.2, 8.3, and 8.4), which resulted in extensive surface and subsurface alteration. These ground disturbances included excavation, grading, trenching, etc. Such types of ground disturbance were likely to have adverse effects on early historical deposits, including:

- Partial or complete elimination of natural soil deposits in their natural stratigraphic sequence,
- Partial or complete elimination of archaeological assemblages,
- Partial or complete liquidation of the relationship between the artifacts and stratigraphy,
- Lateral or vertical movement of artifacts, and
- Destruction of archaeological features.

The archaeological remains may include:

- Historic foundations,
- Cisterns,

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- Historic middens,
- Undocumented structures demolished prior to 1874, and
- Other resources.

Alternative 3 (Option 23B-R2) offers a similar range of predicted archaeological resources as Alternatives 1 and 3 (Options 13G-R1 and 23B-R1). However, the areal extent of Alternative 3 (Option 23B-R2) is small in size, and has correspondingly fewer areas with the potential to contain archaeological resources.

Further discussion of potential archaeological resources has been redacted from this document.

If extant, these archaeological features and remains can be identified and inventoried by means of archaeological surveys that are specified in the *Standards for Cultural Resources Investigations and the Curation of Archaeological Collections in New York State* (1994) formulated by the New York Archaeological Council and approved by the New York State OPRHP.

In accordance with Section 304 of the National Historic Preservation Act of 1966 (as amended), Tables 8-7 and 8-8, containing site-specific possible archaeological resources associated with historic use of the proposed project area, have been removed for protective purposes (see 36 CFR 800.11 (c)(1), Protection of Historic Properties; Documentation Standards).

8.11 Historic Sensitivity Assessment: Peace Bridge Plaza (Fort Porter)

The archaeological sensitivity assessment of the current Peace Bridge plaza and remains of Fort Porter is documented in *Stage 1A Cultural Resource Investigation for the Peace Bridge Plaza and Connecting Roadway System Design Phases I-IV, PIN 5753.58 City of Buffalo, Erie County, New York* (Pierce 1996), and the assessment is summarized in Section 5.6.7.

In accordance with Section 304 of the National Historic Preservation Act of 1966 (as amended), Table 8-9, containing site-specific possible archaeological resources associated with historic use of the proposed project area, has been removed for protective purposes (see 36 CFR 800.11 (c)(1), Protection of Historic Properties; Documentation Standards).

8.12 Historic Sensitivity Assessment: Front Park

The history of Front Park is documented in *Stage 1A Cultural Resource Investigation for the Peace Bridge Plaza and Connecting Roadway System Design Phases I-IV, PIN 5753.58 City of Buffalo, Erie County, New York* (Pierce 1996), and the

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assessment is summarized in Section 5.6.8. Additional information on Front Park is documented in *Historic Resources Survey: Peace Bridge Plaza, EIS* (Foit-Albert Associates 2004). The physical description of the Park is presented in *Draft Environmental Impact Statement/Environmental Screening Report, Peace Bridge Capacity Expansion Project*, Appendix U (Pressley 2004).

Figure 8-1

8-1 Locations (1-4) of Above-Average Archaeological Sensitivity at the Former Fort Porter Grounds

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In accordance with Section 304 of the National Historic Preservation Act of 1966 (as amended), Figure 8-1, containing site-specific possible archaeological resources associated with historic use of the proposed project area, has been removed for protective purposes (see 36 CFR 800.11 (c)(1), Protection of Historic Properties; Documentation Standards).

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Figure 8-2, page 1 of 2 (11 x 17)

8-2 Overlay of Standing Structures and Historic Structures

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In accordance with Section 304 of the National Historic Preservation Act of 1966 (as amended), Figure 8-2, containing site-specific possible archaeological resources associated with historic use of the proposed project area, has been removed for protective purposes (see 36 CFR 800.11 (c)(1), Protection of Historic Properties; Documentation Standards).

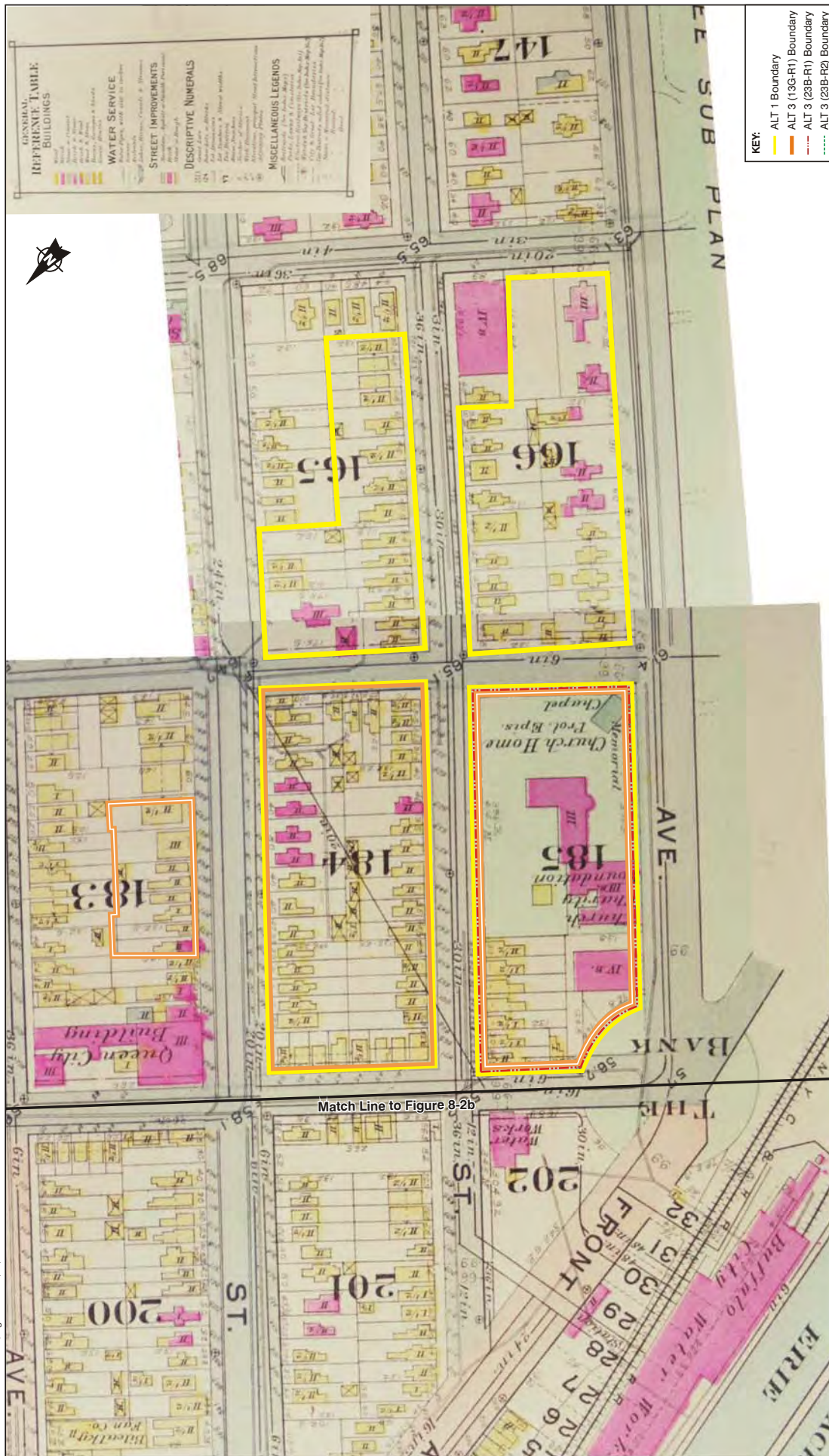


Figure 8-3a The Southern Half of the Project Area in 1915

SOURCE: New Century Atlas, 1915. (Courtesy of the Buffalo and Erie County Historical Society)

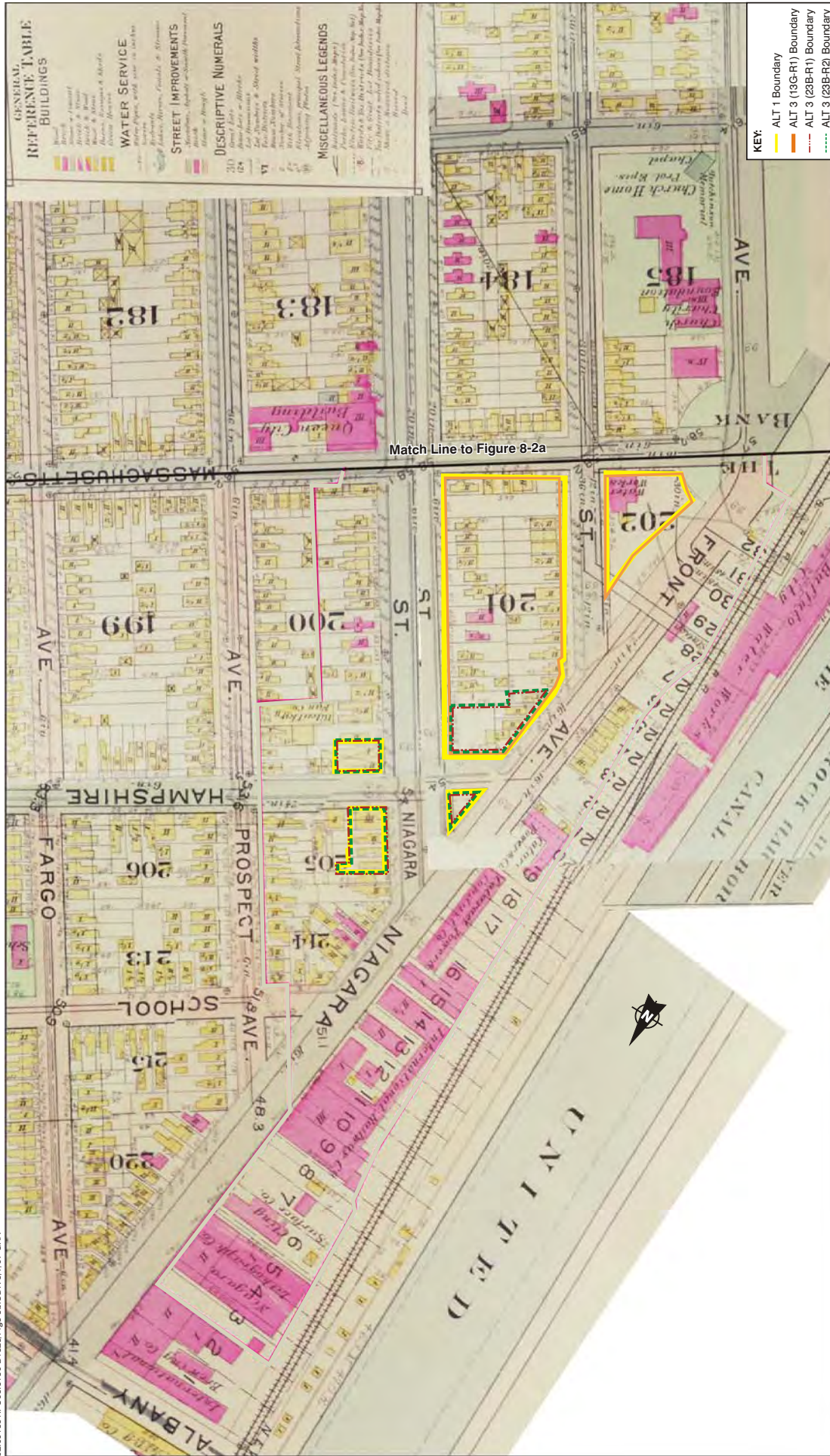


Figure 8-3b The Northern Half of the Project Area in 1915

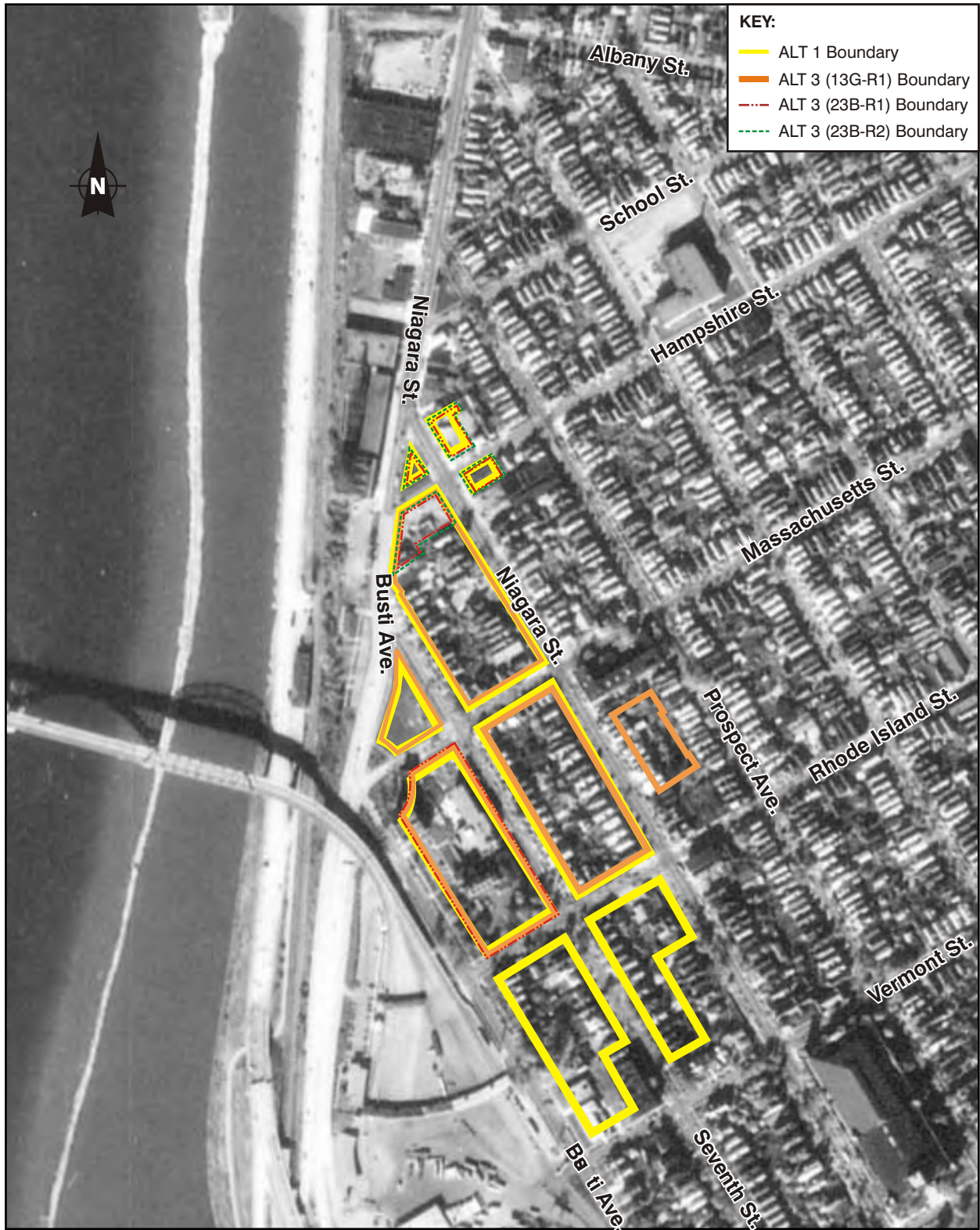
SOURCE: New Century Atlas, 1915. (Courtesy of the Buffalo and Erie County Historical Society)

02:00:361.pcd3.5130-b-1323 Fig8-4.cdr-8/7/07-GRA



SOURCE: Fairchild Aerial Surveys Inc. 1927.

Figure 8-4 A 1927 Aerial View of the Project Area







SOURCE: Fairchild Aerial Surveys Inc. 1978.

Figure 8-5 **A 1978 Aerial View of the Project Area**



Figure 8-6
2002 Aerial View of
Project Area

	ALT1 Boundary	Modern Street Address for Buildings on 1874 Map
	ALT 3 (13G-R1) Boundary	667
	ALT 3 (23B-R1) Boundary	Modern Street Address for Standing Buildings Built Between 1875 - 1888
	ALT 3 (23B-R2) Boundary	667



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Figure 8-7, page 1 of 2 (11 x 17)

8-7 Georeferenced Image of the Map of Fort Tompkins over the 1874 Map of the Study Area

In accordance with Section 304 of the National Historic Preservation Act of 1966 (as amended), Figure 8-7, containing site-specific possible archaeological resources associated with historic use of the proposed project area, has been removed for protective purposes (see 36 CFR 800.11 (c)(1), Protection of Historic Properties; Documentation Standards).

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Figure 8-8

**8-8 Georeferenced Image of the Map of Fort Tompkins over
2002 Aerial Photography**

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In accordance with Section 304 of the National Historic Preservation Act of 1966 (as amended), Figure 8-8, containing site-specific possible archaeological resources associated with historic use of the proposed project area, has been removed for protective purposes (see 36 CFR 800.11 (c)(1), Protection of Historic Properties; Documentation Standards).

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Figure 8-9, page 1 of 2 (11 x 17)

8-9 Portions of Lots with Above-Average Potential for Archaeological Deposits

In accordance with Section 304 of the National Historic Preservation Act of 1966 (as amended), Figure 8-9, containing site-specific possible archaeological resources associated with historic use of the proposed project area, has been removed for protective purposes (see 36 CFR 800.11 (c)(1), Protection of Historic Properties; Documentation Standards).

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Conclusions and Recommendations

[In accordance with Section 304 of the National Historic Preservation Act of 1966 (as amended), this document has been amended to remove site-specific location information about archaeological resources for protective purposes (see 36 CFR 800.11 (c)(1), Protection of Historic Properties; Documentation Standards), prior to its release to the general public.]

9.1 Prehistoric Concerns: Alternatives 1 and 3 (all options)

As noted in Section 7.2, research undertaken in the course of this project strongly indicated that the footprints of all alternatives were very likely to have had prehistoric sites. However, this generally high sensitivity was probably greatly reduced or negated by intrusive historic and modern land uses. Practically all surfaces within Alternatives 1 and 3 (all options) have sustained impacts from various types of ground-disturbing operations such as excavation of basements and utility trenches, grading, fill deposition, down-cutting, and installation of paved surfaces. Nevertheless, the presence of prehistoric deposits in the study area remains a possibility.

The methodology of the map analysis used in this study allows for identification of specific locations that sustained a relatively lesser degree of ground alteration than is typical in the area and which, consequently, have a higher than average potential for containing prehistoric remains. If prehistoric archaeological remains exist at these locations, they are likely to occur in features or deposits that are typical of prehistoric periods and are documented in the Niagara Frontier.

These prehistoric manifestations can be detected by means of archaeological survey techniques that are consistent with the *Standards for Cultural Resources Investigations and the Curation of Archaeological Collections in New York State* (1994) formulated by the New York Archaeological Council and approved by the New York State OPRHP.

9. Conclusions and Recommendations

It is recommended that a Phase IB Archaeological Survey be conducted at the locations of high sensitivity following the selection of an alternative and before the initiation of proposed construction. Because the actual locations of remnant prehistoric sites cannot be predicted within the footprints of Alternatives 1 and 3 (all options), it is recommended that intensive archaeological monitoring be performed during construction activities. The purpose of this monitoring would be to ensure that archaeological remains are identified in a timely manner and investigated by professional archaeologists before they are destroyed by construction activities. The treatment of prehistoric archaeological resources discovered during monitoring and any archaeological salvage/documentation of these resources should be developed in consultation with the OPRHP.

9.2 Historic Concerns: Alternatives 1 and 3 (all options)

The historical map analysis (including superimposing the footprints of historic parcels and structures on modern maps and aerial photographs) indicates that a number of locations within the footprints of Alternatives 1 and 3 (all options) have potential for containing intact historic archaeological remains.

Historic archaeological features within Alternatives 1 and 3 (all options) can be detected by means of archaeological survey techniques that are consistent with the *Standards for Cultural Resources Investigations and the Curation of Archaeological Collections in New York State* (1994) formulated by the New York Archaeological Council and approved by the OPRHP.

9.3 Fort Porter

As noted in Section 8.11, archaeologically sensitive locations exist under the pavement of the current Peace Bridge plaza. The recommended treatment for these potential archaeological resources in these locations would depend on the final design of proposed construction. If the final design for proposed construction within the existing U.S. Peace Bridge plaza calls for removal of concrete or paved surfaces, pavement, and minor surface alteration (e.g., a return to green space) at any archaeologically sensitive locations, then monitoring of the alteration/removal process by a professional archaeologist is recommended as part of the Phase IB archaeological investigation of these locations. If the final design for proposed construction involves deep excavation at any archaeologically sensitive locations, then a mechanically assisted Phase IB archaeological field investigation is recommended in these locations prior to the deep excavation process. The treatment of archaeological resources discovered during monitoring or mechanically assisted field investigations, and any archaeological salvage/documentation of these resources, would be developed in consultation with the OPRHP.

9.4 Front Park

As a whole, the Front Park has a very low archaeological potential due to extensive ground alteration. If the final construction design calls for earth-moving activity in this area, an archaeological survey is recommended.

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Agency Consultation



New York State Office of Parks, Recreation and Historic Preservation
Historic Preservation Field Services Bureau
Peebles Island, PO Box 189, Waterford, New York 12188-0189

518-237-8643

January 16, 2004

Leonid Shmookler
Ecology and Environment
Buffalo Corporate Center
368 Pleasant View Drive
Lancaster, NY 14086

Dear Mr. Shmookler:

Re: FHWA, GSA
Peace Bridge Expansion Project
City of Buffalo, Erie County
01PR4982

Thank you for consulting with the State Historic Preservation Office (SHPO) regarding the scope and content of the Phase 1A Archaeological Survey. The Phase 1A Survey is an important planning document that is crucial for the success of subsequent field investigations. Below is a summary of the main points discussed at our January 14, 2004 meeting:

1. Since the prehistoric culture history of the Niagara Frontier is more similar to that of southern Ontario it is suggested that both the local and regional prehistoric context statements rely heavily on the chronological framework and site data of southern Ontario. This will also facilitate comparisons with the archaeological investigations conducted by Ronald Williamson for the Buffalo and Ford Erie Public Bridge Authority in Fort Erie, Canada.
2. In terms of developing the prehistoric context and sensitivity statements we would also recommend that they be developed using site data from the Niagara River corridor since the physiographic setting is comparable.
3. It is the experience of the SHPO that intact prehistoric and historic archaeological deposits often exist in urban settings. This is because in the nineteenth and early twentieth centuries demolish debris was often not removed from construction sites but used as fill that protected the original ground surface. Even in areas where the topsoil has been disturbed; large, deep features such as Native American storage/trash pits and Euroamerican wells, privies and structural remains may survive. In fact this is exactly the situation encountered by Ronald Williamson in Fort Erie. According to Williamson, "Most important was the discovery that significant [prehistoric] archaeological deposits remain intact immediately below the pavement and concrete/gravel bed of the road and sidewalks" (1996:10). In order to make a determination regarding the necessity of archaeological testing in an urban setting, various lines of evidence are critical and any Phase 1A report should include:
 - a. A detailed written history specific to the project area in addition to a more general history of the larger community.
 - b. A map documented structure map or maps that show the location of nineteenth and early twentieth century structures in relation to the current buildings and structures. This document is critical because it helps the archaeologists determine where historic archaeological deposits are most likely to be located and the impact of past and proposed construction activities on those resources.

4. SHPO recommends that the Phase 1A Report include detailed Phase 1B testing recommendations that address both prehistoric and historic cultural resources. This testing strategy must be systematic so that all testable areas have similar coverage and are thus comparable.
5. All areas that will not be tested because of previous ground disturbance must be clearly outlined on the project area map and labeled with the specific type of disturbance. Documentation of ground disturbance should include a description of the disturbance, in terms of area and depth, with confirming evidence. Confirmation can include current photographs and/or older photographs of the project area which illustrate the disturbance (approximately keyed to a project area map), past maps or site plans that accurately record previous disturbances, or current soil borings that verify past disruptions to the land.
6. A synthesis of the Phase 1A Report Cultural Resource Investigation, prepared by Carolyn Pierce and dated August 30, 1996, will be included as a section in the current Phase 1A Report.

The SHPO appreciates the opportunity to comment on this information. Please telephone me at ext. 3280 with any questions you may have. Please also refer to the PR# above in any future correspondences for this project.

Sincerely,

A handwritten signature in cursive script, reading "Nancy Herten". The signature is written in dark ink and is positioned below the word "Sincerely,".

Historic Preservation Program Specialist



New York State Office of Parks, Recreation and Historic Preservation
Historic Preservation Field Services Bureau
Peebles Island, PO Box 189, Waterford, New York 12188-0189

518-237-8643

April 01, 2004

Vincent P. Lamb, P.E.
Peace Bridge Expansion Project
37 Franklin Street
Buffalo, New York 14202

Re: FHWA/GSA
Peace Bridge Expansion/Includes 99PR0732,
97PR2238, 94PR2363
Buffalo, Erie County
01PR04982

Dear Mr. Lamb, P.E.:

Thank you for requesting the comments of the Office of Parks, Recreation and Historic Preservation (OPRHP) concerning your project's potential impact/effect upon historic and/or prehistoric cultural resources. Our staff has reviewed the documentation that you provided on your project. Preliminary comments and/or requests for additional information are noted on separate enclosures accompanying this letter. A determination of impact/effect will be provided only after ALL documentation requirements noted on any enclosures have been met. Any questions concerning our preliminary comments and/or requests for additional information should be directed to the appropriate staff person identified on each enclosure.

In cases where a state agency is involved in this undertaking, it is appropriate for that agency to determine whether consultation should take place with OPRHP under Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law. In addition, if there is any federal agency involvement, Advisory Council on Historic Preservation's regulations, "Protection of Historic and Cultural Properties" 36 CFR 800 requires that agency to initiate Section 106 consultation with the State Historic Preservation Officer (SHPO).

When responding, please be sure to refer to the OPRHP Project Review (PR) number noted above.

Sincerely,

Ruth L. Pierpont
Director

RLP:cmp

cc: Douglas Conlon

NATIONAL REGISTER EVALUATIONS

Date: 03/24/2004

Staff: C. Ross

Project Ref: 01PR04982

MCD: Buffalo (C) Erie Co.

Listed and/or eligible properties: Based on information provided the following properties are listed or eligible for listing on the State and National Registers of Historic Places.

Front Park--NR Listed
Columbus Park, both sections--NR Listed
Connecticut Street Armory--NR Listed

Previously National Register Eligible:

Peace Bridge
New York State Barge Canal
St. Mary's on-the-Hill Episcopal Church, 76 Vermont St.
St. Mary's on-the-Hill Parish House, 86 Vermont St.
Hutchinson Chapel and Episcopal Church Home, 24 Rhode Island St.
771 Busti Avenue
1032/1048 Niagara Street

Peace Bridge Expansion Area

Busti Avenue, 679, 719, 721, 771 previous NRE
Massachusetts Avenue, 42, 44, 93
Vermont Street Historic District, 40, 44, 48, 50
Prospect Avenue, 696, 895
Niagara Street, 728, 756, 772, 778, 784, 802, 804, 812, 1032-1048 previous NRE
Columbus Parkway Historic District, 676 thru 730 (even side); 679 thru 699 (odd side); and Columbus Parkway West, 136, 140, 144, 150, Columbus Parkway, 776, 786, 788 Individuals

Not eligible:

The remaining properties within the project area, including a buffer zone, are Not Eligible for listing on the State and National Registers of Historic Places.

Please contact Claire Ross at 518-237-8643b ext. 3259 if you have any questions concerning this evaluation. Please be sure to use the project number noted above in all future correspondence.

B

Photographs

Note: A list of photographs begins on page B-9.

B. Photographs



Photograph 1 Green space and paved walkway at the south end of 958 Busti Avenue, facing north.



Photograph 2 Peace Bridge and CSX-Amtrak tracks, facing north.

B. Photographs

In accordance with Section 304 of the National Historic Preservation Act of 1966 (as amended), photographs 3 and 4, containing site-specific possible archaeological resources associated with historic use of the proposed project area, have been removed for protective purposes (see 36 CFR 800.11 (c)(1), Protection of Historic Properties; Documentation Standards), prior to its release to the general public.

B. Photographs



Photograph 5 The Bank with the Peace Bridge in the background from Sole Park, facing south.



Photograph 6 The Peace Bridge from a pedestrian walkway next to the CSX-Amtrak tracks, facing northwest.

B. Photographs



Photograph 7 Green space at the intersection of Busti Avenue, Niagara, and Hampshire streets, facing north.



Photograph 8 The Episcopal Church Home from Rhode Island Street, facing northwest.

B. Photographs



Photograph 9 The Hutchinson Memorial Chapel from Rhode Island Street, facing west.



Photograph 10 Vacant lot at 4 Vermont Street, facing north.

List of Photographs

In accordance with Section 304 of the National Historic Preservation Act of 1966 (as amended), photographs 3 and 4, containing site-specific possible archaeological resources associated with historic use of the proposed project area, have been removed for protective purposes (see 36 CFR 800.11 (c)(1), Protection of Historic Properties; Documentation Standards), prior to its release to the general public.

1. Green space and paved walkway at the south end of 958 Busti Avenue, facing north
2. Pedestrian bridge over the CSX-Amtrak tracks, facing north
3. This photograph has been removed to protect the identified resource.
4. This photograph has been removed to protect the identified resource.
5. The Bank with the Peace Bridge in the background from Sole Park, facing south
6. The Peace Bridge from a pedestrian walkway next to the CSX-Amtrak tracks, facing northwest
7. Green space at the intersection of Busti Avenue, Niagara, and Hampshire streets, facing north
8. The Episcopal Church Home from Rhode Island Street, facing northwest
9. The Hutchinson Memorial Chapel from Rhode Island Street, facing west
10. Vacant lot at 4 Vermont Street, facing north



OPRHP and SUNY BUFFALO Survey Site File Check Tables

C. OPRHP and US Survey Site File Check Tables

In accordance with Section 304 of the National Historic Preservation Act of 1966 (as amended), Tables C-1 and C-2, containing site-specific information about the location of the identified archaeological resources, have been re-move for protective purposes (see 36 CFR 800.11 (c)(1), Protection of Historic Properties; Documentation Standards), prior to its release to the general public.

D

Monitoring Plan for Alternatives 1 and 3 of the Proposed Peace Bridge Expansion Project

**MONITORING PLAN
FOR
ALTERNATIVES 1 AND 3 (ALL OPTIONS) OF THE
PROPOSED PEACE BRIDGE EXPANSION PROJECT
CITY OF BUFFALO, ERIE COUNTY, NEW YORK**

(August 2007)

In accordance with Section 304 of the National Historic Preservation Act of 1966 (as amended), this document has been amended to remove site-specific location information about archaeological resources for protective purposes (see 36 CFR 800.11 (c)(1), Protection of Historic Properties; Documentation Standards), prior to its release to the general public.

1. Introduction

The Buffalo and Erie County Public Bridge Authority (BFEPBA) and the Federal Highway Administration (FHWA), in cooperation with the New York State Department of Transportation (NYSDOT), are preparing a Draft Environmental Impact Statement (DEIS) to study the potential effects of a proposed plan for expansion of the Peace Bridge at the international crossing between Buffalo, New York, and Fort Erie, Ontario (the proposed Peace Bridge Capacity Expansion Project, or the Project). The proposed Project may require the construction of a new plaza on the U.S. side of the border. Because the proposed expansion is a federal project, historic properties within the proposed Project's area of potential effect (APE) require state and federal review.

Ecology and Environment, Inc. (E & E) prepared a draft Phase IA cultural resource investigation report for two proposed design alternatives and submitted it to the New York State Office of Parks, Recreation, and Historic Preservation (OPRHP) in June 2004.

The OPRHP reviewed the Phase IA cultural resource investigation and, on August 2, 2004, requested that a Monitoring Plan be developed prior to initiation of the proposed Project. This Monitoring Plan was formulated to assist the BFEPBA, FHWA, NYSDOT, and OPRHP to adequately address unexpected discoveries of historic properties and human remains.

Subsequent to the OPRHP's review of the June 2004 draft Phase IA cultural resource investigation for the proposed Project and their August 2004 request for a Monitoring Plan for the proposed Project, the Project has undergone significant design changes, including the development of a third alternative, Alternative 3 – Shared Border Management. The specific changes made include:

- Alternative 1 has been redesigned and expanded to include some of the residential neighborhoods to the east and the north of the existing plaza. The redesigned alternative has the formal designation of Alternative 1B-R3; however, it is hereinafter referred to as Alternative 1;
- Alternative 2 was dropped from consideration; and

- A new Alternative 3 – Shared Border Management was developed that includes three sub-options that make better use of currently BFEPA-owned land by minimizing takes in Buffalo and Fort Erie. The U.S. plaza options minimize the footprint of improvements in the U.S. and enhance connections to the I-190 and Buffalo city streets. All three sub-options partially overlap the new Alternative 1.

Full descriptions of Alternatives 1 and 3 are presented in Chapter II of the DEIS.

Data collection undertaken for the 2004 Phase IA cultural resources investigation for the original Alternatives 1 and 2 encompass areas now covered by the redesigned Alternative 1 and all three sub-options of Alternative 3; therefore, no new data collection was required. Because of the change in the footprint of the redesigned Alternative 1 and the development of Alternative 3, the 2004 Phase IA Cultural Resource Investigation Report has been updated to a 2007 report. A copy of the draft 2007 Phase IA Cultural Resource Investigation Report was submitted to SHPO on December 13, 2006, for review and comment and is included as Appendix E of the proposed project's DEIS.

2. Historic Resources Potentially within the Footprints of Alternative 1 and Alternative 3 (all Options)

Phase IA research demonstrated that historic archaeological resources may exist at various locations within the footprints of both alternatives. Resources that may exist include but are not limited to the following:

- Historic foundations;
- Cisterns, privies, absorption tile, and other features associated with early water closets;
- Historic middens; and
- Remnants of undocumented structures demolished prior to 1874.

3. Potential Prehistoric Resources within Alternatives 1 and 3 (all Options)

Despite well-documented ground-disturbing operations such as excavation of basements and utility trenches, grading, fill deposition, regrading, and installation of paved surfaces, the presence of prehistoric deposits in the project area remains a possibility. If archaeological remains, they are likely to include the types of prehistoric features or deposits that have been documented in the Niagara Frontier, including hearth features, roasting platforms, deposits of fire-cracked rocks, fire-discolored soils and stains, storage pits, post moulds, occupational layers, artifacts, etc.

4. The Sequence of Cultural Resources Protection Measures

This section outlines the sequence of steps designed to ensure compliance with the regulations governing the conduct of cultural resource investigations in New York State. These steps are contained in the *Standards for Cultural Resources Investigations and the Curation of Archaeological Collections in New York State* (1994), which was formulated by the New York Archaeological Council and approved by the OPRHP.

4.1 Phase IB Survey

Once an alternative is selected, a Phase IB archaeological survey will be performed. The findings of the Phase IB archaeological survey will be communicated to the BFEPBA and the OPRHP via a formal report.

4.2 Phase II Evaluations

If cultural resources are discovered during the Phase IB field investigation, the Phase IB Report will serve as a basis for the Project Archaeologist to open consultation with the OPRHP to develop an appropriate Phase II evaluation program. This program may include additional data collection, excavation of trenches and units, and other appropriate field methods. Upon acceptance of this program by the OPRHP, this program will be executed by the Project Archaeologist.

Following completion of the Phase II fieldwork, a Phase II report will be submitted to the OPRHP. The report will identify the methodology used for the Phase II investigation and delineate any resources found to a level sufficient for the OPRHP to make a determination regarding the eligibility of the sites discovered for listing in the National Register of Historic Properties (NRHP). Construction will not take place at the specified locations until the OPRHP has finished its review of the report and makes a determination as to the eligibility of the resources for listing in the NRHP.

4.3 Phase III Mitigations

If the OPRHP determines that a discovered resource is eligible for listing in the NRHP and avoidance of the resource is not feasible, a Phase III data recovery will take place in accordance with procedures developed by the Project Archaeologist in consultation with the OPRHP.

4.4 Construction Monitoring

If archaeological resources are not discovered during the Phase IB investigation, the locations will be subjected to archaeological monitoring during construction.

Prior to construction, the BFEPBA will name an overall Project Manager and a Construction Manager. The Construction Manager will be responsible for daily supervision of construction and is expected to be present on site during all phases of construction. The BFEPBA will inform the Construction Manager that the project area may contain archaeological deposits eligible for listing in the NRHP. The Construction Manager will also be informed that these deposits may be exposed during excavation.

The Construction Manager, in consultation with the BFEPBA and the Project Archaeologist, will schedule demolition/excavation at the identified locations of above-average archaeological potential (see Tables 1 through 4 for the specific locations associated with each Alternative) within a defined period of time so that the Project Archaeologist has an opportunity to mobilize the archaeological team.

The Project Archaeologist and his/her team will be present during all ground-disturbing activities that take place at the locations with above-average archaeological potential identified above. The BFEPBA Project Manager will give the Project Archaeologist at least three days advance notice of any ground-disturbing activities that will take place at these locations.

The Project Archaeologist will have access to all excavations. The monitoring activities will comply with all appropriate federal and state safety guidelines and the BFEPBA's safety plan. If cultural resources are discovered, the following actions will be taken:

1. At the request of the Project Archaeologist, the Construction Manager will suspend all construction/excavation activities in the area of the discovery and will notify the BFEPBA Project Manager of the suspension.
2. The Project Archaeologist will gather information regarding the significance of the discovered resource. If the Project Archaeologist determines that the resource merits a professional examination, he/she will initiate the examination as promptly as possible.
3. The Project Archaeologist may request the use of available on-site machinery (e.g., backhoe) to expose a larger section of the resource. However, any additional exposure will be of limited scope. If, at this point, the Project Archaeologist determines that the resource is insignificant, construction may resume immediately. However, if Project Archaeologist judges the resource to be potentially significant, construction will remain suspended to give the Project Archaeologist an opportunity to notify the OPRHP of the finding and a determination is made as to the need for additional investigation.
4. If, at the end of the investigations and in consultation with the OPRHP, the resource is determined to be ineligible for NHRP listing, the Project Archaeologist will submit a letter to the BFEPBA and OPRHP that documents the results of the monitoring, the investigated resource(s), and the photographic record.

Typical construction delays range from a half-hour to a day. However, it may require several days to treat large and complex resources. In the event that such resources are identified, the Project Archaeologist will, to the best of his/her ability, provide the Construction Manager with an estimate of the duration and scope of the necessary data recovery. As the data recovery processes are case specific and may require consultation with the OPRHP, exact estimates are not always possible. Artifacts and soil samples will be returned to E & E's archaeological laboratory for analysis. Once the analysis has been completed, the artifacts will be curated at the Marian E. White Research Museum at the State University of New York at Buffalo.

4.5 Discretionary Monitoring

Other resources may occur within the footprints of Alternatives 1 and 3 (all options). The probability for occurrence of these resources is low, and their precise location cannot be determined on the basis of historical research.

Discretionary monitoring will take place during all phases of construction that may affect the above-mentioned resources. The discretionary monitoring will be conducted in accordance with the procedures described in Section 4.4 with the following exception: The Project Archaeologist will periodically visit the project site at intervals that are based on the rate and locations of the pre-construction ground-disturbing activities.

4.6 Unanticipated Discovery Plan

The Unanticipated Discovery Plan will be implemented at all times. The Construction Manager will be informed that there is the potential to uncover archaeological remains in the

areas that do not require archaeological monitoring. The Construction Manager will be briefed on the types of deposits that are likely to be encountered (see Sections 2 and 3). In the event that archaeological remains are discovered, the following actions will be taken:

1. The Construction Manager will immediately suspend all construction/excavation activities in the area of the discovery and notify the BFEPA Project Manager.
2. The Project Manager, Construction Manager, and Project Archaeologist will discuss a course of action via conference call. During this discussion, the Project Archaeologist will gather information as to the significance of the discovered resource. If the Project Archaeologist determines that the resource merits a professional examination, he/she will go to the project location as soon as possible.
3. The Project Archaeologist will assess the discovered resource by personal examination. In the course of this examination, the Project Archaeologist may request the use of available on-site machinery (e.g., backhoe) to expose a larger section of the resource. This additional exposure will be of limited scope.
4. If, at this point, the Project Archaeologist determines that the resource is insignificant, construction may resume immediately. However, if the resource is judged to be potentially significant, construction will remain suspended, the Project Archaeologist will notify the OPRHP, and a determination will be made of the need for additional examination.
5. If the OPRHP determines that the discovered resources lack significance, construction will be permitted to resume with continued monitoring during construction activities. If so, the Project Archaeologist will remain on site for the duration of any operations that may expose or damage cultural resources at that location. The Project Archaeologist will be granted the opportunity to collect additional information during construction, staying in touch with the OPRHP throughout.
6. If the OPRHP determines that the resource is ineligible for NHRP listing, the Project Archaeologist will submit the photographic record and a letter documenting the results of the monitoring and descriptions of the investigated resources to the BFEPA and OPRHP.
7. If the OPRHP determines that the resource requires an archaeological investigation (whether a Phase I survey or Phase II evaluation), the scope, methods, and reporting requirements of this investigation will be determined based on circumstances.

4.7 Unanticipated Human Remains Discovery Plan

The Unanticipated Human Remains Discovery Plan will be implemented whenever human remains are discovered. The probability of encountering human remains in the project area is moderate. If such remains are encountered, the following actions will be taken:

1. The Construction Manager will immediately suspend all ground-disturbing activity and traffic in the vicinity of the remains. The Construction Manager will fence off the area and take all necessary steps to ensure the remains are not disturbed.

2. The Construction Manager will immediately notify the Project Manager of the find. The Project Manager will call 911 and notify the police dispatcher of the find. The Project Manager will also notify the Project Archaeologist.
3. Following their initial examination, the police will notify the Office of the Chief Medical Examiner (OCME). An OCME investigator will then determine the approximate age of the human remains.
4. If it is determined that the human remains are recent, the OCME investigator will assume jurisdiction and make arrangements for removal of the remains. The Construction Manager will ask for a concurrence from the OCME investigator to continue construction at the location of the find.
5. If the remains are archeological in nature, a bio-archaeologist will be notified and they will travel to the site to confirm the identification and assess the condition and integrity of the remains. If the human remains are determined to be Native American, the remains will be left in place and protected from further disturbance until a plan for their avoidance or removal can be prepared. The authorizing federal agency will consult with the OPRHP and contact appropriate Native American groups to determine a plan of action. If the human remains are determined to be Euro-American, the remains will be left in place and protected from further disturbance until a plan for their avoidance or removal can be generated. Consultation with the OPRHP and other appropriate parties will be required to determine a plan of action.

Contacts:

Project Manager: To be determined.

Construction Manager: To be determined.

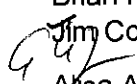
Project Archaeologist: To be determined.

OPRHP:

Dr. Nancy Herter
Peebles Island, PO Box 189
Waterford, NY 12188
Tel: 518-237-8643

Memo

To: Brian Reilly, Commissioner, EDPIS
Jim Comerford, Deputy Commissioner

From:  Aisa A. Lukasiewicz, Corporation Counsel
Brendan Mehaffy, Assistant Corporation Counsel
Mary B. Scarpine, Assistant Corporation Counsel

CC: Hon. Byron W. Brown, Mayor
Deputy Mayor Steven Casey
Peter Cutler

Date: 5/12/2009

Re: City's Authority with the PBA Under the New York State Fire Prevention and Building Code

The City of Buffalo cannot enforce the New York State Property Maintenance Code, or any other section of the New York State Uniform Fire Prevention and Building Code, against the Buffalo and Fort Erie Public Bridge Authority ("PBA").

The New York State Court of Appeals determined that the PBA is considered a New York State agency. As a State agency, the PBA is subject to the laws of New York State and the jurisdiction of the State Courts.¹ Pursuant to Section 1201.2(d)(1) of Title 19 of the Compilation of Codes, Rules and Regulations of the State of New York:

"the State shall be accountable for administration and enforcement of the Uniform Code with respect to buildings, premises and equipment in the custody of, or activities related thereto undertaken by, a State department, bureau, commission, board or authority."

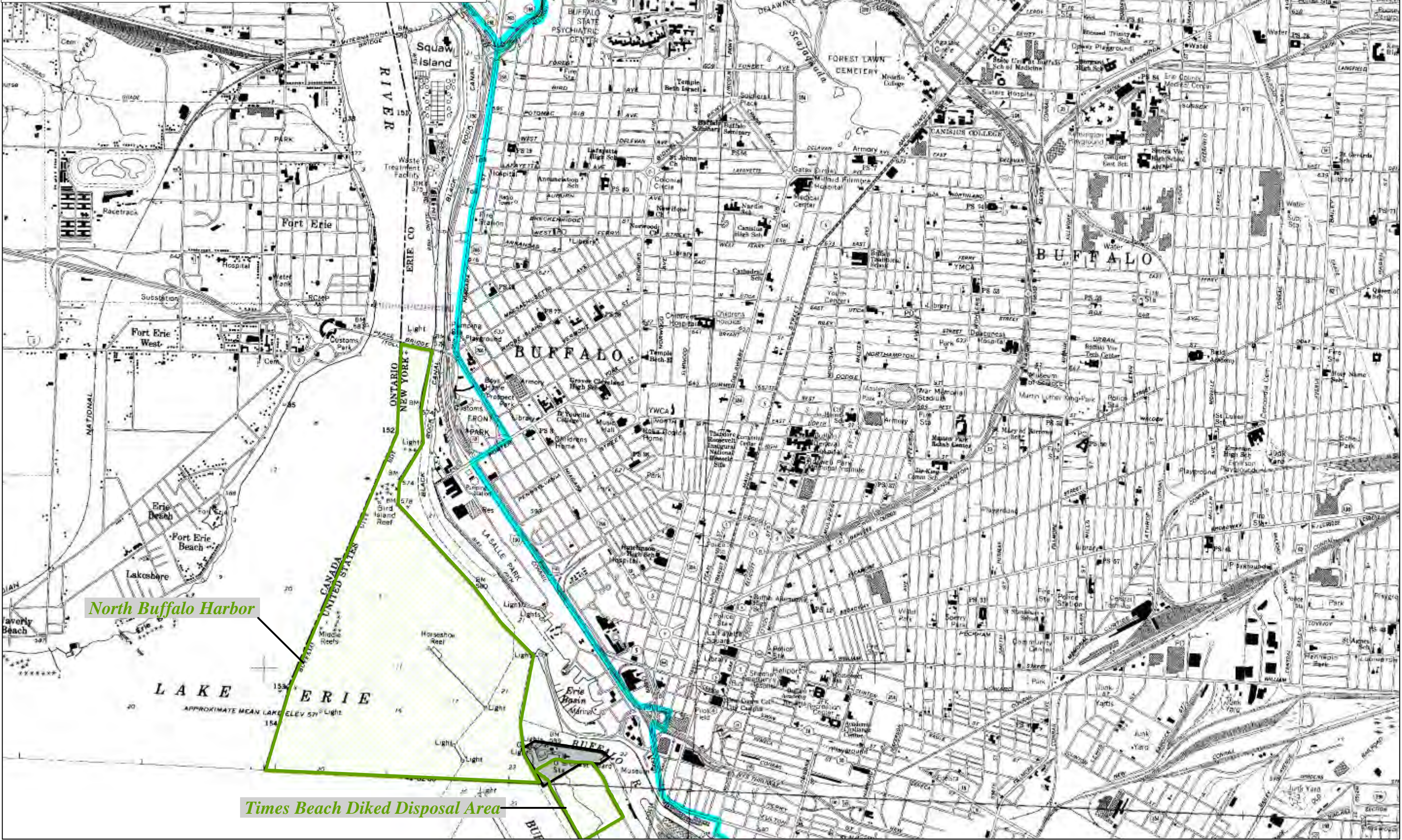
In the event the PBA argues that it is not a State agency, but rather an international compact entity, the City of Buffalo would have even less authority under the New York State Fire Prevention and Building Code than if the PBA was a State agency. The issue as to whether or not the PBA is a State agency or an international compact entity is the subject of current litigation ongoing in front of Federal Magistrate Judge Kenneth Schroeder.

¹ In People ex re. Buffalo & Fort Erie Publ. Bridge Auth. v. David, 277 NY 292 (1938).

Buffalo North (South)



See: Note 1





From: Bonafide, John (PEB) [<mailto:John.Bonafide@parks.ny.gov>]

Sent: Monday, June 11, 2012 8:21 AM

To: Adam S. Walters; Anthony Braunscheidel

Subject: Revised letter

Mr. Walters,

Thank you for your letter of May 17. I have attached a revised version of our previous letter correcting the identified typo in the text.

John A. Bonafide

Director

Technical Preservation Services Bureau

Division for Historic Preservation

Peebles Island State Park

P.O. Box 189

Waterford, NY 12188-0189

☎: 518-237-8643, ext.3263 | 📠: 518-233-9049 | ✉: john.bonafide@parks.ny.gov

Web Site: <http://nysparks.com/shpo>



New York State Office of Parks, Recreation and Historic Preservation

Division for Historic Preservation
Peebles Island, PO Box 189, Waterford, New York 12188-0189
518-237-8643
www.nysparks.com

Andrew M. Cuomo
Governor

Rose Harvey
Commissioner

May 17, 2012

Adam S. Walters
Phillips Lytle LLP
3400 HSBC Center
Buffalo, NY 14203-2887
(via e-mail only)

Re: Info Request
Buffalo and Fort Erie Public Bridge Authority
Demolitions/757, 765, 771, 777, 783, 791 & 793
Busti Ave., Buffalo, Erie Co.
12PR01929

Dear Mr. Walters:

Thank you for requesting the comments of the NYS Office of Parks, Recreation and Historic Preservation's Division for Historic Preservation. As noted in your letter of April 12, 2012, we are being asked to review this information in an advisory capacity as the Buffalo and Fort Erie Public Bridge Authority (PBA) are not subject to NYS law with regard to operational matters (4/12/12 letter page 2). Specifically, we have been asked to comment on the proposed demolition of the buildings located at numbers 757, 765, 771, 777, 783, 791 and 793 Busti Avenue using the Section 14.09 of New York State Parks, Recreation and Historic Preservation Law as our guide.

As the provided report mentions, the buildings at 771, 777 and 793 Busti Avenue have previously been determined to be eligible for inclusion in the New York State and National Registers of Historic Places through a Section 106 (NHPA) review. Although that review process was terminated the eligibilities that were completed during the identification phase of that process nevertheless remain eligible in our inventory of historic/cultural resources for New York State. As such, the proposed demolition of these three eligible resources would constitute an *Adverse Impact* under 9 NYCRR Part 428.7(a)(1).

Section 428.9 (9 NYCRR) requires that as a result of this finding the applicant seek some level of public comment on the proposal. The previous Section 106 consultation for the proposed new bridge and expanded plaza received extensive public input, including the demolition of these buildings. Based on the submitted materials it also appears that a new public hearing was held on April 4, 2012 specifically to gather comment on the demolition of these seven buildings. The PBA presentation, sign-up sheets and written public comments from this meeting have been reviewed by our office.

PBA000991

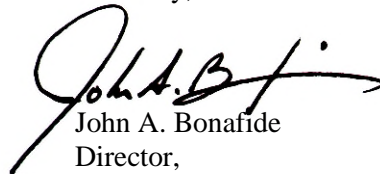
The public comment process should be followed by an analysis of reasonable and prudent alternatives that might avoid or lessen the adverse impacts on the resources. This information has been provided in the material included with your letter and subsequent e-mail. The provided materials would indicate that the buildings have reached the end of their structural life and that rehabilitation or adaptive reuse by the PBA would be economically and programmatically unreasonable. The documentation presents a picture of three building that are in a state of significant deterioration. However, we would be remiss if we did not state that this is in many ways a self imposed hardship created the PBA as a result of not providing the buildings with a minimum level reasonable maintenance.

Once it is determined that there are no alternatives that would avoid or lessen the adverse impact the next step would be to establish an appropriate level of mitigation for the loss of these resources. Your submission includes several key options that we would have recommended. First, you have already offered the buildings up for relocation by any interested party as evidenced by the PBA's public notice dated February 27, 2012. It is our understanding that no proposals were received by the closing deadline of April 26, 2012.

Next we would recommend, as you have in your documentation, that efforts be made to salvage architectural features from the buildings. The last recommendation that this office would make is to create property documentation packages for each building, which you have already included in your materials. The information submitted is sufficient to meet our standard requirements for such materials. This material should be provided to a local repository and to this office in both hard copy and digital formats.

Lastly, we are saddened to see the building at 771 Busti Avenue demolished. It is a truly unique and important vestige of the development of this section of the city. We appreciate the opportunity to provide the PBA with these informal comments. If I can be of any further assistance do not hesitate to contact me at (518) 237-8643, ext. 3263.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Bonafide", with a stylized flourish extending from the end.

John A. Bonafide
Director,
Technical Preservation Services Bureau

cc: Anthony Braunscheidel, PBA (via e-mail)

PBA000992